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January 27, 2004

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**By Hand**

Ms. Mary L. Cottrell  
Secretary  
Department of Telecommunications & Energy  
One South Station  
Boston, MA 02110

Re: D.T.E. 03-128  
Petition of USGen New England, Inc. For Leave To Intervene

Dear Ms. Cottrell:

On behalf of USGen New England, Inc. ("USGenNE"), I enclose for filing in the above-referenced docket one original and three copies of Petition of USGen New England, Inc. for Leave to Intervene.

Kindly date stamp the enclosed copy of this letter, and return same to our messenger.

Thank you for your attention to this matter.

Sincerely yours,

Mary Beth Gentleman

MBG:jrd  
Enclosure

cc: Selma Urman, Hearing Officer  
Paige Graening, Esquire  
Mr. Louis M. Arak

16/375119.1

Petition of New England Power Company  
for Exemption of Electric Substation  
Additions from Zoning Ordinances  
of Salem, Massachusetts

Pursuant to the Notice issued by the Department of Telecommunications and Energy in the above-captioned docket on December 31, 2003, and pursuant to G.L. c. 30A, § 10 and the rules of procedure found at 220 C.M.R. 1.00 et seq., USGen New England, Inc. (“USGenNE” or “Company”) hereby petitions for leave to intervene in this proceeding.

1. USGenNE is a wholesale generation company as defined by G.L. c. 164, § 1. D.P.U. 98-20 *Petition of USGen New England, Inc. Requesting an Advisory Ruling by the Department of Telecommunications and Energy Pursuant to 220 C.M.R. § 2.08(1)*, April 8, 1998. USGenNE's principal place of business is 7600 Wisconsin Avenue, Bethesda, Maryland. USGenNE's Massachusetts office is located at 50 Congress Street, Boston.

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Anne Sterman  
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155 Seaport Boulevard  
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16/374834.4

Mr. Louis M. Arak  
Salem Harbor Station  
24 Fort Avenue  
Salem, MA 01938.

3. New England Power Company (“NEP”), the Petitioner in the instant docket, is seeking “exemption by the Department from the operation of the Zoning Ordinances of the City of Salem, Massachusetts with respect to the construction and use of proposed additions to NEP’s 115kV switchyard located at Salem Harbor Station.” NEP Petition at 1. Specifically, NEP proposes to add two capacitor banks to its 115kV switchyard (“Switchyard”). NEP Petition at 4.

4. Salem Harbor Station, where the Switchyard is located, is owned in fee by USGenNE.

5. NEP owns equipment in the Switchyard and operates that equipment on USGenNE’s land pursuant to an easement.

6. The subject of this Petition will substantially and specifically affect USGenNE, as the proposed project would be built on land which USGenNE owns in fee simple.

7. Under Section 110.900 of the Salem Zoning Code, absent proper permits and zoning compliance, changes in a property’s use or in structures violate the Zoning Code:

- (a) No property shall be developed, redeveloped, or changed in use; no building structure or premises shall be used or occupied; and no building or structure or part thereof shall hereafter be erected, constructed, moved, structurally altered, or enlarged unless in conformity with all applicable regulations herein specified, and all conditions imposed in the granting of any applicable land use action, and then only after applying for and securing all permits and licenses required by all applicable laws and ordinances.
- (b) It shall be unlawful for any person to violate, or to cause, suffer, or permit any violation of the provisions of subsection (a) of this section.

8. Further, the Salem Zoning Code provides that zoning violations are presumed to be of both “the occupant of the premises as well as that of the owner or with such owner’s consent.”

9. While USGenNE takes no position on NEP’s proposed zoning exemption at this time, the uses which NEP makes of its easement directly affect USGenNE’s interests, because USGenNE would be presumptively liable for zoning violations within the area of NEP’s easement.

10. In addition, USGenNE has received a Site Plan Review Decision from the City of Salem Planning Board for construction and use of an Emission Control Plan (“ECP”) Project at Salem Harbor. That Site Plan Decision imposes many conditions on the work done by USGenNE at the site, such as hours of work, noise mitigation measures, restrictions on access for construction vehicles, and other limitations on activities occurring as part of the construction. NEP’s proposed project is likely to be under construction simultaneously with the ECP Project. USGenNE has a specific interest in ensuring that the site conditions set forth in the Site Plan Review Decision are not violated by any person at the site, including NEP. USGenNE’s participation in this proceeding as an intervenor will allow the Company to provide information to the Department to ensure that any approval received by NEP in this docket will not conflict with the site conditions required under USGenNE’s Site Plan Decision.

11. The interests of USGenNE as fee simple owner of the property in question cannot be adequately represented by any other party to or any limited participant in this proceeding.

Therefore, USGenNE respectfully petitions the Department for leave to participate as an Intervenor in this proceeding, so that USGenNE may protect its rights and interests in the property and equipment at Salem Harbor Station.

Respectfully submitted,

USGEN NEW ENGLAND, INC.

By its attorneys,

A handwritten signature in cursive script, reading "Mary Beth Gentleman", written over a horizontal line.

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